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Submission to Department of Health and Ageing in
response to Discussion paper on Aged Care Complaints
Scheme: Proposed Complaints management Framework

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Lee Thomas
Federal Secretary

Yvonne Chaperon
Assistant Federal Secretary

Australian Nursing Federation
PO Box 4239 Kingston ACT 2604

T: 02 6232 6533

F: 02 6232 6610

E: anfcanberra@anf.org.au

<http://www.anf.org.au>

1. Introduction

The ANF provided a submission to the review of the Aged Care Complaints Investigation Scheme (the Scheme) conducted for the Australian Government by consultant Associate Professor Merrilyn Walton, in August 2009. The ANF noted the subsequent release by the Australian Government of the results of Associate Professor Walton's review in April 2010. It was pleasing to see that issues of concern raised in the ANF submission were obviously considered and reflected in the Walton review report, including a range of recommendations aimed at improving the operation, timeliness and transparency of the Scheme.

The reaction by the Australian Government to the Walton Review recommendations of providing funding to strengthen the Scheme's capacity to better respond to complaints in the subsidised aged care service sector, and, to support early risk assessment and resolution of complaints, are welcomed by the ANF.

The ANF now has a membership of over 200,000 nurses, midwives and assistants in nursing, with a significant cohort of those members working in the aged care sector. Our organisation therefore has an abiding interest in ensuring that the complaints mechanism employed in the sector allows for timely, fair and equitable management of issues raised by residents/carers/staff to achieve safe, quality care delivery.

2. Aged care complaints scheme: proposed complaints management framework

The ANF has reviewed the discussion paper released by the Department of Health and Ageing (DoHA) in February 2011 titled *Aged Care Complaints Scheme: Proposed Complaints Management Framework* and provides the following brief comments against the questions for consideration.

2.1 Discussion Point 1: overview of the framework

Is the proposed framework appropriate to respond to both residential and community care complaints?

Yes. Both the Investigative and non-investigative pathways appear to be logical approaches to dealing with complaints in either residential or community aged care settings.

Are there alternative complaint resolution approaches not identified in the framework that you think should be incorporated into the proposed complaints management framework?

The complaints management framework workflow chart (as shown on page 9 of the Discussion paper) appears to be based on a sensible and logical methodology that incorporates many points at which to identify and reflect upon the various pathways to complaint resolution, or to further investigation.

Should the Scheme have the power to require complainants to take reasonable steps to resolve their issues in the complaint with the approved provider *before* the Scheme will take action in response to the complaint?

Depending on the nature of the complaint, the ANF agrees that the complainant should take reasonable steps to resolve their issues with the approved provider. There must be a mechanism in the framework that requires the approved provider to “log” the complaint with DoHA so the matter can be followed up by either the Scheme or the Aged Care Standards and Accreditation Agency, at the time of an audit or a compliance review. The Scheme is then given a copy of the approved providers investigation and response to the complaint, so that the Scheme can benchmark the approved provider’s response to ensure the response complies with the approved providers’ obligations under the Aged Care Act (if relevant) or other statutory, legal or industrial obligation.

However, having said the above, the ANF also takes the view that the concept of having “the power to ‘require’ complainants” is too inflexible. Rather complainants should be “encouraged and supported to resolve their issues with the approved provider”, which could include providing information and support on the steps recommended in a complaints process, and provision of supporting documents regarding provider and consumer rights / responsibilities.

The Scheme should monitor to ensure natural justice principles have applied to both the complainant and the approved provider. This includes the need for there to be scope for the Scheme to proceed on behalf of the complainant, where barriers exist for that person to take ‘reasonable’ steps with the provider.

Should the non-investigative resolution processes outlined be available to all complainants (staff & interested parties)? Or, should these resolution methods be limited to care recipients and their representatives?

As suggested above, the Scheme should be made aware of non-investigative complaints. Where a complainant felt they were unreasonably refused feedback on the outcome of their complaint upon request to the approved provider for such information, there ought to be a mechanism whereby the parties can seek such information from the Scheme, to ensure the response is appropriate and compliant with, for example, any relevant standards or legislation.

The non-investigative resolution processes should be available to all complainants including care recipients and their representatives, as well as staff and interested parties.

Likewise it is imperative that staff are able to raise complaints through the “*investigative pathway*” as this should suggest that other avenues have been exhausted (for example, internal avenues: via management, incident reports). Where a staff member is raising a specific care provision issue for a particular resident, or where several residents are adversely affected, then this should be accepted as a valid pathway to go through the investigative avenue. It should be recognised that staff have an advocacy role. There is a potential power differential between staff and management that may block staff from being able to gain resolution of a resident’s care complaint locally.

The other related issue is where the complaint is about poor systems and practices overall that lead to poor resident care. It is completely inadequate to classify these as an ‘accreditation’ issue, and not a complaints issue. Staff must be able to lodge complaints about systems failures that directly affect resident care.

2.2 Discussion Point 2: risk assessment and response framework

Does the risk escalation criteria adequately capture the range of 'consequences' experienced by care recipients receiving aged care services?

The risk escalation criteria appears to adequately capture the range of 'consequences' where incidents occur and provides an outline of situations where action needs to be taken in a timely manner.

The ANF notes however, that it should be stated in the framework that extraordinary circumstances may arise where action may need to be taken, that is not mentioned, and that the table is not inclusive.

Also, while points 20 and 21 outline proposals to evaluate and regularly review the framework, there is no inclusion of a mechanism for consumers to be part of that regular review.

(Please note: the font in Appendix 1 is most difficult to read when printed)

Is the classification of 'consequences' outlined in the risk escalation criteria appropriate?

Yes.

Are the 'likelihood' definitions appropriate?

Yes, however there needs to be a mechanism for the Scheme to know when the approved provider has taken a non-investigative pathway. This is so the Scheme knows there was an incident that was investigated, should the matter arise again in the future, and there is a record the matter was handled locally.

The ANF notes that from the consumer's perspective they may find the language in the Risk escalation criteria table of 'no adverse outcome' to be dismissive. Responses such as embarrassment, feeling offended, or experiencing sleeplessness due to worry would be an adverse outcome for the resident, even if the Scheme deems it 'no adverse outcome'.

Are the proposed escalation timeframes reasonable?

Yes.

Is the range of additional information that the Scheme considers to determine the mode & timeframe for responding to an issue in a complaint appropriate?

Yes.

Does the proposed approach include enough checks and balances to minimise the risk of complaints being handled inappropriately?

Depending on the circumstances there is always potential for error, however, there appears to be minimal risk of complaints being handled inappropriately in the proposed approach.

2.3 Discussion Point 3: investigation by the Scheme

Are the proposed referral criteria for investigation by the Scheme appropriate?

Yes, although it is important that governance structures be consistent and integrate with existing regulatory frameworks, such as aligning with nursing/midwifery notification processes.

Making a report to the Aged Care Complaints Scheme should not be viewed as replacing one's obligation to report alleged misconduct/breaches of professional standards to the Nursing and Midwifery Board of Australia (NMBA), particularly if the allegations are made by one nurse against another.

Mechanisms will need to be in place to ensure that communication occurs with the relevant regulatory authorities within the Australian Health Practitioner Regulation Agency (AHPRA) to ensure integration of activities in areas of overlap.

Is the existing process for investigating complaints appropriate, if accompanied by the alternative options for resolving complaints?

Yes.

Are the review rights appropriate? If not, why?

The review rights are appropriate for the present. However, there is a suggestion by the Productivity Commission in its current study on *Caring for Older Australians* that the Office of the Aged Care Commissioner be restructured and assume a different role. There ought to be a provision included for reference to the Office of the Aged Care Commissioner or relevant Office (proposed Australian Aged Care Regulation Commission).

An additional point is that it is important that measures are put in place to manage vexatious complainants. There should be another box hanging off the "Investigation by the Scheme" box titled "Vexatious matters". Any matters then that are investigated and found to be vexatious, the Scheme will cease to investigate.

2.4 Discussion Point 4: supported resolution

Are the referral criteria for the types of issues that may be resolved through supported resolution adequate? If not, why?

The proposed referral criteria are a very useful guide. However, these could be strengthened if the criteria were extended to incorporate supported resolution in relation to allegations of elder abuse that cannot be substantiated.

Should the approved provider be contacted by the Scheme and advised of the concern raised by the complainant?

Yes. This would be where the Scheme thinks such action is appropriate and where it considered it would not be detrimental to a resident or a resident's family, or the employment of a staff member if they are raising concern/s with the Scheme.

What support tools should the Scheme use to assist complainants and approved providers to resolve complaints through this process?

Support tools which could be used by the Scheme include: Web based tools, and live advice and support, such as template documents for reporting, brochures, leaflets, guiding principles, telephone service.

2.5 Discussion Point 5: approved provider resolution

Is it appropriate for complaints received by the Scheme to be referred to an approved provider for resolution/investigation as outlined in this proposal?

Yes.

Are the referral criteria for the types of issues that may be referred for approved provider resolution adequate?

Yes.

Are approved providers sufficiently skilled at complaints resolution and investigation to be charged with the responsibility of undertaking these functions? If not, how can their skills be developed or additional supports provided?

This is a broad ranging question. Some approved providers may be very well resourced with access to conciliation officers, human resource specialists and industrial consultants and mediators. Other approved providers, particularly small independent operators, may neither be in a position to offer complaints resolution nor be skilled or qualified to do so. The Scheme must have a mechanism in place to address any such lack of capacity. This connects with our previously mentioned suggestion that complaints are recorded so that during the accreditation process they may be looked at for sound practice.

Under the Aged Care Act (1997), it is a requirement for an approved provider to have a complaints resolution mechanism in place and forms part of the Residential Agreement. The ANF considers that the Complaints Scheme should have a role to play in supporting providers to develop and implement quality complaints resolutions processes. This may include the provision of advice, education (for example, online) and/or the development of templates and forms to assist providers meet their obligations in this regard.

Are the review rights under this option appropriate?

Yes.

What will be the likely regulatory impact on approved providers?

Approved Providers may be in breach of the Aged Care Act 1997, if there are inadequate complaints resolutions processes in place. This may lead to a possible finding of non-compliance against the Aged Care Accreditation Standards and Community Care Standards.

2.6 Discussion Point 6: conciliation

Is conciliation an appropriate method for resolving complaints?

Conciliation may be the most appropriate method to use to resolve complaints and for the complainant to be heard, in some circumstances, and not in others.

If you were a complainant, would you have confidence to take part in a conciliation process? Would access to an advocacy support help a complainant feel confident in this process?

The ANF considers that many complainants in the aged care sector would not have the confidence to take part in a conciliation process without the assistance of an advocacy support person.

Is the referral criterion for the types of issues that may be resolved through conciliation adequate?

Yes.

Should all conciliation meetings be held in-confidence or should participants decide if the conciliation is in-confidence?

Conciliation meetings should generally be held in-confidence, but of course participants should always be able to make the final decision on this matter, prior to the meeting commencing.

Where resolution can not be achieved through conciliation, should a different officer within the Scheme undertake any future investigation of the matter?

Where conciliation meetings are ongoing, or the issue/s cannot be resolved in an initial conciliation meeting, they should continue to be heard by the same officer, for the sake of consistency and timely resolution of matters. Only if the conciliation officer has a conflict of interest or is unable to remain impartial, should the matter be referred to another officer.

How formal should a conciliation meeting be?

Complainants should always have the choice as to who they wish to bring with them into a conciliation meeting, to assist them in presenting their case

Both parties should be informed of who will be attending, for example, lawyer, union representative, prior to the meeting.

2.7 Discussion Point 7: mediation

Is mediation an appropriate method for resolving complaints in relation to matters that may not be an approved provider's responsibility under the Act?

Mediation may be an appropriate method to use to resolve complaints and for the complainant to feel their issues can be heard, in some circumstances, and not in others.

Should the parties to the mediation be required to pay for the cost of mediation services? If not, why?

No. Some people may not have the capacity to pay but without mediation may be unable to move forward with their actual or perceived issues.

The ANF considers that there should be another step in the complaint management framework prior to the mediation stage, where the Scheme decides the seriousness of the case. Only serious cases are moved to mediation and the Department pays for this process.

Further, it is the position of the ANF that there needs to be a hardship provision clause to cover the case of a complaint deemed to go to the mediation stage that is out-of-scope.

If you were a complainant, would you have the confidence to take part in a mediation process? Would access to an advocacy support help you feel more confident in the process?

The ANF considers that many complainants in the aged care sector would not have the confidence to take part in a mediation process without the assistance of an advocacy support person.

Should all mediations be held in-confidence or should participants decide if the mediation is in confidence?

Mediation meetings should generally be held in-confidence, but of course participants should always be able to make the final decision on this matter and express their view prior to the mediation beginning.

Are the review rights under this option appropriate?

The review rights are appropriate and must be made clear to the complainant before embarking on the mediation pathway.

2.8 Discussion Point 8: post-investigation conferencing

Would the proposed post investigation conference be a positive way of restoring relationships between approved providers and complainants following the outcome of the investigation? If not, why?

The proposed post-investigation conferencing concept may prove to be beneficial for some complainants. However, the ANF cautions that this would need to be handled with a great degree of sensitivity where grievances had occurred in preceding processes whereby either party felt they had not had the outcome they envisaged at the commencement of the process.

If you were a complainant, would you have the confidence to take part in a post investigation conference? Would access to advocacy support you in this process?

Access to an advocacy service may be very beneficial to all the parties and must be part of the Scheme.

3. Conclusion

Having participated in the initial review of the Aged Care Complaints Investigation Scheme conducted for the Australian Government in 2009, the ANF welcomes the opportunity to continue to contribute to the improvement of processes for management of complaints in the aged care sector.

With a large cohort of members in the residential and community aged care sectors, the ANF has a genuine concern for the environment in which these nurses and assistants in nursing (however titled) practice, and for the well-being of the frail elderly people for whom they provide care.

The ANF continues to argue forcefully for the need to improve investment in the people and material resources in aged care in Australia, which would lead to enhanced quality of care and infrastructure, and ultimately less need for complaints.

When there is a need for residents/their families/staff to lodge complaints, they must have access to a robust, and easy to navigate, investigation scheme. The complaints body must have sufficient powers to make recommendations which can be enacted to make sustainable improvements to the aged care sector.